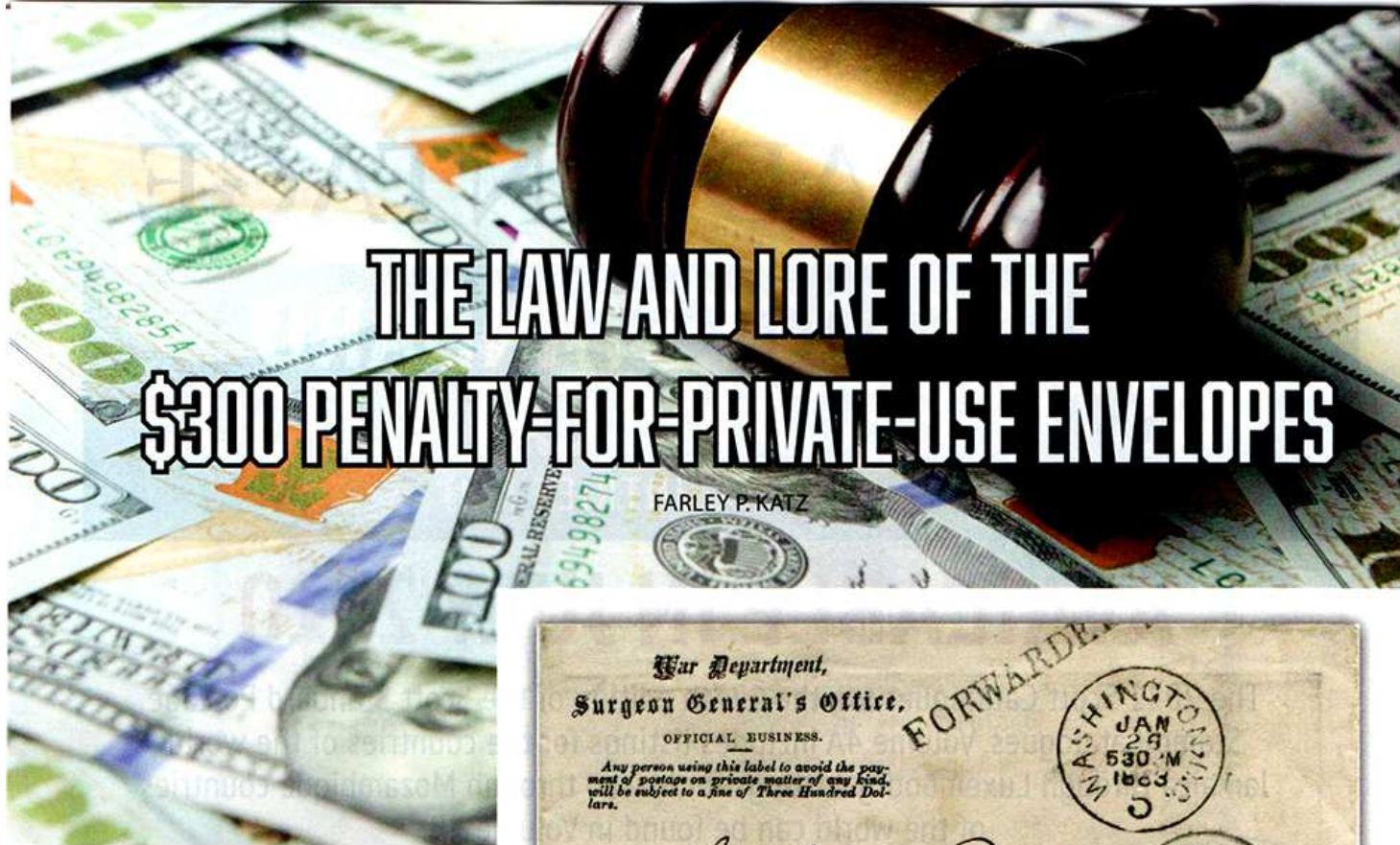


# THE LAW AND LORE OF THE \$300 PENALTY-FOR-PRIVATE-USE ENVELOPES

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Most of us are familiar with U.S. penalty envelopes, marked with a variation of the official warning, "Official Business / Penalty for Private Use \$300" (Figure 1). Penalty envelopes, in use from 1877 to the present, are strictly for official governmental purposes – any private use to avoid paying postage leaves the perpetrator subject to a penalty of \$300, or perhaps more. On paper, the fine is not particularly punitive today; in reality, high-ranking government officials narrowly avoided prosecutions for misusing the franking, and one conniving ne'er-do-well escaped jail and faked his own death to avoid paying the penalty, before ultimately paying his dues.

Collecting covers with the penalty franking is easy enough. But don't be fooled – the laws creating and setting the terms of use and punishment for improper use of these envelopes are far from simple. In the 143 intervening years, these innocuous envelopes have gained a notorious place in America's folklore, the subject of jokes in small town and national newspapers alike.



Figure 1a. An 1883 War Department cover addressed to Clara Barton; the mail was "forwarded" with no additional postage required. The penalty is spelled out clearly: "Any person using this label to avoid the payment of postage on private matter of any kind, will be subject to a fine of Three Hundred Dollars." Courtesy of Les Lanphear.

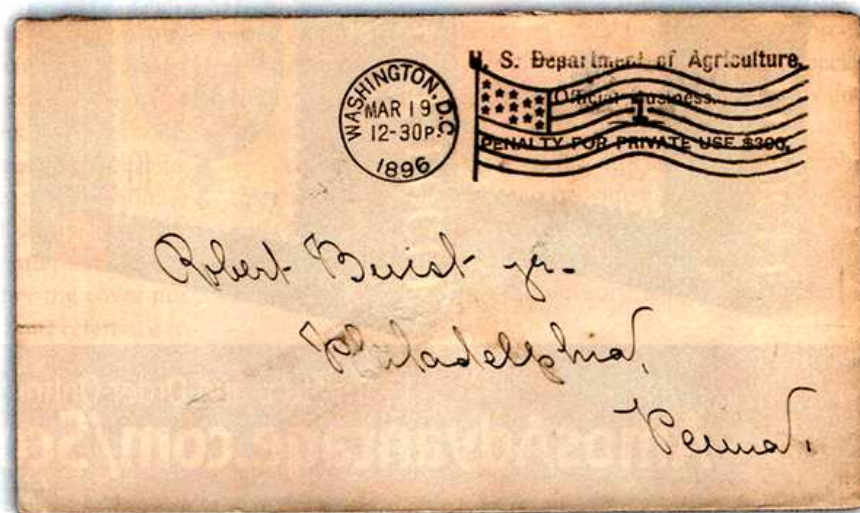


Figure 1b. An 1896 Department of Agriculture cover. Note the simplified legend "Penalty for Private Use \$300," author's collection.



Figure 2a. The earliest known penalty cover from the Executive Mansion, used by President Rutherford B. Hayes in 1878, one year after the Act of March 3, 1877. Courtesy of Les Lanphear.

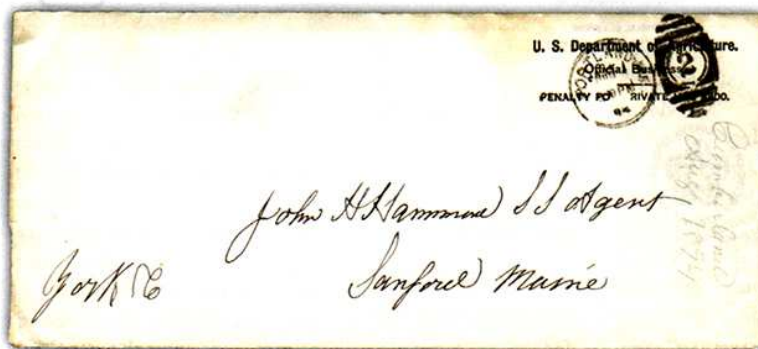


Figure 2b. Another early use – an 1894 Department of Agriculture penalty envelope, reading simply “Penalty for Private Use \$300,” author’s collection.

## THE LAW AND ITS HISTORY

### *The origin of penalty envelopes - 1877*

Effective July 1, 1873, Congress abolished federal franking privileges, which had been heavily abused and resulted in large losses to the Post Office. To replace the franking privilege, Congress authorized the production of official stamps and their use by federal executive departments which would purchase those stamps at face value. Four years later, Congress authorized the production and use of envelopes with postage-free franks. The Post Office found these so-called “penalty envelopes” easier and preferable. As Warren Howard points out in “The Classic Penalty Franks,” unlike official stamps, the envelopes “did not have to be produced by security printers, weighed, stamped, or locked up.” Although official stamps and penalty envelopes co-existed for over a decade, the use of official stamps was discontinued in mid-1884 (Note 1).

Penalty envelopes and their iconic warning originated in the Act of March 3, 1877, “An act establishing post-roads and for other purposes.” One such “other purpose” was to authorize executive departments, bureaus and offices to send mail free of postage, provided it bore the proper “Official Business” endorsement (Figure 2). Any private use

of such an envelope to avoid the payment of postage was a misdemeanor and subject to a fine of \$300, as stated on the envelopes.

A misdemeanor is a crime for which a person can be imprisoned up to one year. In 1877, using a penalty envelope for personal use was a misdemeanor; an offender could be sentenced to prison for up to a year and fined \$300. These sanctions, moreover, were *per violation*.

### *Prison eliminated as a punishment – 1909*

In the Act of March 4, 1909, Congress codified and reorganized the criminal provisions of federal law. The sentence providing punishment for the private use of a penalty envelope became Section 227 of the new Act. The reference to “misdemeanor” was dropped, so that a violation of the law was no longer subject to imprisonment. In addition, the fine was changed from a flat \$300 penalty to “not more than” \$300. Despite this, penalty envelopes continue to this day to state that the penalty is a flat \$300.

In 1948, Section 227 became Section 1719 of Title 18 of the United States Code, which defines most federal crimes, lesser sanctions and criminal procedures (Figure 3).

### *The penalty raised to \$5,000 – 1984*

In 1984, Congress overhauled the criminal provisions

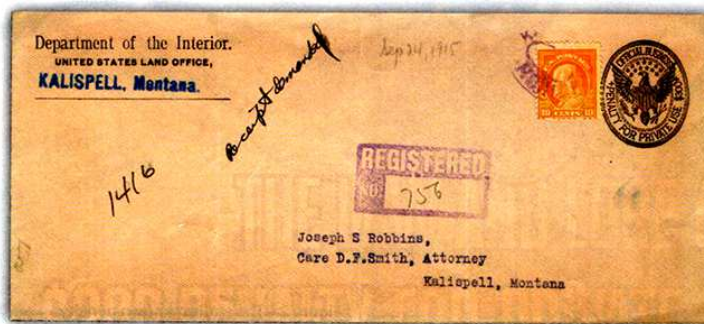
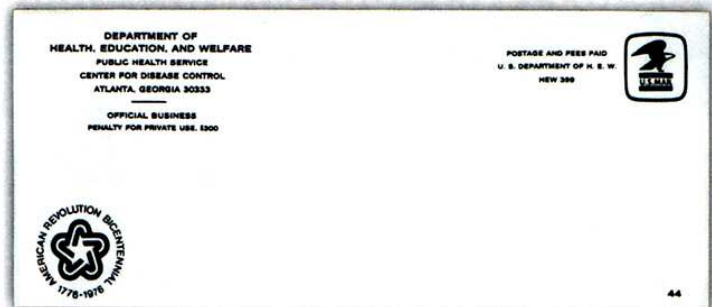


Figure 3. Although the law changed in 1909, the franking did not. Above, a 1915 Department of the Interior penalty envelope, with indicium still reading "Penalty for Private Use \$300." A 10 cent stamp was added to pay the registered fee, not included in the frank. Right, an unused 1976 Bicentennial Department of H.E.W. Center for Disease Control penalty envelope bearing the same legend. From the author's collection.



in Title 18. One of the new provisions was 18 U.S.C. Section 3571, prescribing uniform criminal fines. The relevant provision, Section 3571(b), provided that individuals who are found guilty of an offense may be fined whichever is greatest: "the amount specified in the law setting forth the offense" or "for an infraction, not more than \$5,000."

An "infraction" is defined as an "offense" for which the "maximum term of imprisonment authorized is ... five days or less, or if no imprisonment is authorized..." Section 1719 therefore is an infraction and the maximum fine for violating it is the greater of (1) the \$300 amount specified in the section or (2) \$5,000. Thus, beginning in 1984, an individual violating 18 U.S.C. Section 1719 could be fined up to \$5,000 per violation (Note 2).

Legislation in 1994 confirmed that the maximum fine was \$5,000. Congress amended 18 U.S.C. Section 1719 to delete "not more than \$300" and provide that anyone who uses an official envelope to avoid the payment of postage "shall be fined under this title." The *only* statutory source for the amount of the fine now is Section 3571(b), which authorizes a fine of up to \$5,000 for an infraction. Appropriately, the section of the Act that amended Section 1719 was entitled "Correction of Misleading and Outmoded Fine Amounts in Offenses under Title 18." While \$300 may have been a hefty fine in 1877, it certainly was an "outmoded amount" by 1994.

*Or is it still only \$300?*

Despite the clear language of the 1994 legislation, the

federal government still appears to assume the penalty is \$300. The statute authorizing penalty envelopes, now 39 U.S.C. Section 3203(a), has always required that "The penalty for the unlawful use of all penalty covers *shall be printed thereon.*" And from 1877 to today, penalty envelopes have *always* stated that the "penalty for private use" is \$300. One might argue that although the government *could* impose a fine of up to \$5,000, it is required to state the maximum fine on the envelopes and it has chosen to limit the fine to \$300.

I have found no indication that the Post Office has actually thought about this at all. I have contacted the Law Department of the United States Postal Service for comment, but have not received a reply. Federal prosecutors have little interest today in charging misdemeanors and even less in imposing and trying to collect fines for infractions. Perhaps a combination of tradition and prosecutorial priorities have left the \$300 penalty the *de facto* punishment.

During the writing of this article, I was hoping to receive a recent penalty envelope in the mail to show that the penalty is still \$300. I got my wish; unfortunately, the letter was from the IRS, asking why I hadn't paid tax on \$23,847 which an identity thief fraudulently took from my Social Security account (Figure 4).

*Has anyone been imprisoned or fined for misuse of penalty envelopes?*

One common question is whether anyone has ever actually been imprisoned or fined for private use of official envelopes. As we shall see, the answer is "yes." But there



Figure 4. A 2019 IRS penalty envelope warning the author of other penalties.

is not a simple way to find records of such prosecutions. Many people are charged and convicted of crimes each year in the federal system. Most plead guilty; few actually go to trial. An index or comprehensive list of persons charged or convicted of federal felonies, let alone of misdemeanors or infractions, does not exist. To find such information, we must look elsewhere.

One useful online resource to search digitized newspapers is [www.newspapers.com](http://www.newspapers.com), a paid subscription site. Another option is the Library of Congress' free resource "Chronicling America," which provides access to hundreds of digitized newspapers at <https://chroniclingamerica.loc.gov/>. In online searches I have found several recorded instances where a charge or conviction of penalty envelope violations made the newspapers, most commonly when there was some additional point of interest to the story. Google searches, especially the Google Advanced Book Search, also produce some records of prosecutions or fines. Let's dive in.

#### *The earliest prosecution*

Three hundred dollars was a substantial sum of money in 1877. For comparison, in 1877 the cost for mailing a first class letter was three cents per half ounce; a laborer in New York State earned, on average, \$1.25 per day. The law was taken seriously, and the first violations were prosecuted shortly after penalty envelopes were authorized. As we shall see, virtually all the violations involved government employees who had access to penalty envelopes.

The earliest charge I have found, indeed, involved a Post Office employee. On June 6, 1881, James R. Ward, a postal route agent between Baltimore and Washington, appeared before a Commissioner regarding charges of using penalty envelopes for private use. No doubt those were Post Office envelopes to which he had easy access. His case was sent on to the United States District Court in Baltimore for further proceedings, but I have not discovered what happened to Ward next (Note 3).

#### *The Attorney General of the United States gets personally involved*

Surprisingly, one early case actually reached the desk of the Attorney General of the United States, the highest official in the Justice Department, who took a personal interest in the prosecution. In late 1882, multiple charges against individuals in violation of the Private Use clause reached Attorney General Benjamin H. Brewster. Brewster ordered the United States Attorney for the Southern District of New York, Stewart L. Woodford, to prosecute certain individuals "for using a Government envelope in a private correspondence." Woodford conducted an investigation, "ascertain[ed] that it was the result of negligence and not of intention" and refused to bring charges.

Woodford, clearly not finished with the matter, reminded Attorney General Brewster of his own, similar act of carelessness: "the acknowledgment by the Attorney General himself, under a Government penalty envelope, of a social invitation." The Attorney General, miffed by this insubordinate reply, stated that Woodford's allusion —

"is not proper, and is inadmissible between us.

It might not be inadmissible as between gentlemen in a matter of personal business, but as between the head of this Department and one of its subordinates it cannot be permitted . . . Besides, I am not on trial, nor is there any complaint made against me; and I again suggest that such an allusion was not deferential and proper." (Note 4)

The article ends "It is said Woodford is booked for removal." In fact, his tenure ended on March 12, 1883. In any event, the ironic allegation that the Attorney General himself may have violated the law was amusing enough to make the front page of a Missouri newspaper, far from Washington and New York.

#### *Other early prosecutions*

On September 25, 1883, George W. Johns, an attorney who practiced before the Pension Office, was charged in

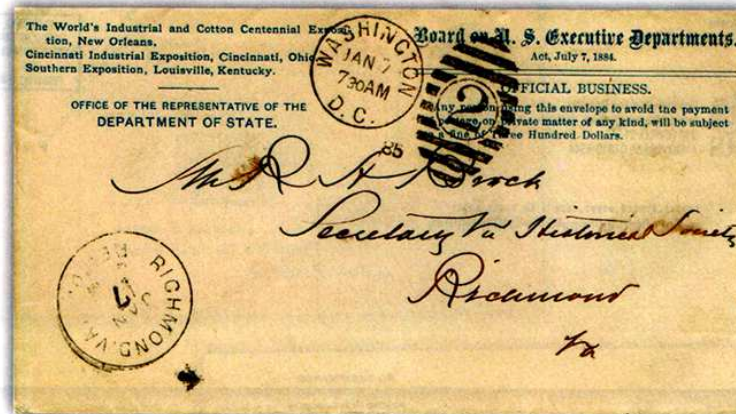


Figure 6a. The following demonstrate the varieties of text used to inform penalty envelope users of the terms of use. First, an 1884 cover from the State Department, bearing their earliest printed penalty clause. The cover additionally advertises three expos in the corner card: One printing for three events. Courtesy of Les Lanphear.

Washington D.C. with the private use of penalty envelopes. He pled guilty and was ordered to pay a fine of \$300 and, if he failed to pay the fine, five days in jail. The judge made clear that Johns was getting off easy and in the future he would not limit imprisonment to five days. Shortly thereafter, Johns was disbarred from practice before the Pension Office as a result of this violation (Note 5).

In 1884, Frank Candy, a U.S. Census employee in Washington, D.C., was arrested for using penalty envelopes for private correspondence, as reported by the *Rochester Democrat and Chronicle*, July 1884. What happened to Candy remains a mystery, as I have not found an article reporting his fate.

*The Postmaster General of the United States is accused of violating the law*

The irony of claiming that high government officials, particularly the Postmaster General, had violated the Private Use law was not lost on the public. In September 1890, Rufus N. Rhodes, the editor of the *Birmingham Evening Post*, was arrested and charged with sending lottery advertisements through the mails - no doubt, ads in copies of his newspaper that had been mailed to customers. At the same time, Rhodes had published an editorial supporting a pending anti-lottery bill proposed by United States Postmaster John Wanamaker that would criminalize sending lottery tickets through the mails (Note 6). Within days of his arrest, Rhodes received a letter from Wanamaker, marked "confidential" and signed by his private secretary, thanking Rhodes for his editorial. Wanamaker's letter - you guessed

it - had been sent in an official envelope. The *Birmingham Evening Post* quickly published an editorial asserting that Wanamaker had misused the envelope and calling for his arrest. Newspapers throughout the country, including the *Boston Globe*, picked up the story.

Claims that official envelopes were being misused in a variety of similar circumstances appeared in newspapers in the 1890s (Note 7). Over the years, newspapers often claimed that officials or politicians were using penalty envelopes for campaigning or other personal reasons and carped about unnecessary and wasteful uses of those envelopes.

*The presidents get involved*

The penalty for misuse of official envelopes reached the highest level of the government during the presidencies of Grover Cleveland and Teddy Roosevelt, who gave pardons and commuted sentences, respectively, to individuals convicted of private use of penalty envelopes. In January of 1896, F.M. Salisbury of Oregon was convicted of private use of a penalty envelope and fined \$300. A few months later, on March 9, President Cleveland pardoned Salisbury, as "there was grave doubt as to any intent to defraud the government." And, on June 2, 1903, Ricardo Viñas y Conejero was convicted in Puerto Rico and fined \$300 for use of a penalty envelope. On January 16, 1904, Roosevelt reduced his fine to \$25 because of the circumstances of the case and his poverty (Note 8). Of course, I would like to assume that the official pardon notices to Messrs. Salisbury and Viñas were sent to them in penalty envelopes.